



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

File: LIN-99-094-51773

Office: Nebraska Service Center

Date: AUG 3 2000

IN RE: Petitioner:
Beneficiary

[REDACTED]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

[REDACTED]

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Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

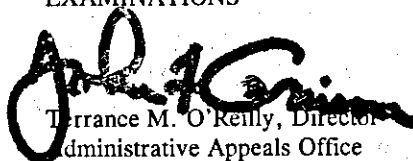
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a minister. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

At issue in the director's decision is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on February 5, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from February 5, 1997 to February 5, 1999.

In its letter dated February 2, 1999, the petitioner stated that the beneficiary:

arrived in the United States on November 8th, 1996 . . . to attend All Nations mentoring program developed under [redacted] Church. During that time, as part of the growing and maturing process as a minister of God, [the beneficiary] was apprenticed by professionals in the religious field. He learned to assume religious responsibilities such as praying, participating in worship services and sharing his faith in Jesus Christ with adults, children and teenagers. He was able to sharpen his religious skills as a minister as he worked closely with pastors, Bible teachers, preachers, and missionaries. It gave him a broad perspective on the possibilities in his chosen field. He successfully completed this mentoring program in June 1998 . . . Upon completion of All Nations mentoring program, [the beneficiary] was officially appointed to serve on the staff of The [redacted] Church. He serves in the capacity of Minister/Religious Instructor in Youth Ministerial Leadership.

The petitioner submitted a photocopy of a District Ministerial License issued by it to the beneficiary on December 1, 1998.

The director determined that the beneficiary had not been licensed prior to the start of the two-year period, and therefore could not have been working as a minister throughout the qualifying period. The director denied the petition. On appeal, the petitioner states that "what [the beneficiary] did at the church, what [he] does at the church, and what [he] will do at the church are not different . . . [The beneficiary] was in the position of a full time minister

since he arrived in the USA in November 1996." Counsel argues that "the regulations do not require that the two years of experience be licensed experience." The petitioner submits a brochure describing its church and the programs offered. This brochure also lists the different leaders, pastors, and directors of the different ministries within the church. It is noted that the beneficiary's name is not listed under any of these titles.

In Matter of Z-, 5 I&N Dec. 700 (Comm. 1954), the Commissioner held that continued study by an ordained member of the clergy was not interruptive of his or her continuous practice of a religious vocation. The beneficiary in this case was not an ordained member of the clergy throughout the qualifying period and has never been engaged in a religious vocation as defined in this proceeding. Accordingly, any period of time spent in a mentoring program conducted by the petitioner does not constitute continuous work experience in a religious occupation.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from February 5, 1997 to February 5, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2). Also, the petitioner has failed to establish that it made a valid job offer to the beneficiary as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.